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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,941	09/22/2003	Andrew Walker	P-US-CS 1144	1634

7590 01/30/2006

Bruce S. Shapiro  
Black & Decker Corporation  
Mail Stop TW199  
701 E. Joppa Rd  
Towson, MD 21286

EXAMINER

KYLE, MICHAEL J

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,941	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> Michael J. Kyle	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*ky*

## DETAILED ACTION

### *Claim Objections*

1. Claim 2 is objected to because it is unclear if the gripping portion is being claimed in combination with the power tool. The preamble to the claim limits the scope to "A gripping portion", however, the body of the claim goes onto recite a housing and motor within the housing. These appear to be features of a power tool, not a gripping portion. If the combination is to be claimed, it should be clearly set forth in the claim.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 2-5 are rejected under 35 U.S.C. 102(e) as being anticipate by DeLuca et al ("DeLuca", U.S. Patent No. 6,591,456). With respect to claim 2, examiner notes the claim is presently directed only to a gripping portion. The limitations regarding the power tool are considered to be intended use recitations, as the power tool is not claimed in combination with the gripping portion. As long the prior art is *capable* of being used for the intended purpose, then it is considered to read on the claim. DeLuca discloses a gripping portion, which is capable of being used with a power tool, where the gripping portion comprises at least one flexible sheet (100, 102, 202) and at least one support (230, 250, 256). The flexible sheet is mounted to the

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support to retain gaseous vibration damping medium (column 12, lines 20-21) between the support and a single thickness of the sheet. Examiner notes that layer 172 is single thickness. The gaseous medium (108) is retained between this and the support as claimed. Additionally, the support includes at least one aperture (254) enabling a portion of the flexible sheet (100, 102, 202) to protrude through the aperture. Examiner notes that DeLuca discloses the cushioning device may be used on either finger held or hand held articles, such as tools (column 3, lines 19-20, and column 4, lines 46-50).

4. With respect to claims 3-5, the flexible sheet has a plurality of pockets (106), and the support forms part of the housing (112, 114). The gaseous medium is air (column 12, line 29).

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 6, 7, and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wadge (U.S. Patent No. 6,206,107) in view of DeLuca (U.S. Patent No. 6,591,456). With respect to claim 1, Wadge discloses a gripping portion (on handle 10) for a power tool. The gripping portion is engaged by the hand of a user of the tool. The power tool includes a housing (4) and a motor. Wadge fails to disclose the flexible member, clamping member, or chamber as claimed.

7. DeLuca discloses a gripping portion used on a tool, comprising at least one flexible member (100, 102, 202) and a clamping member (230, 250, 256) having an aperture (254) so that the clamping member clamps the flexible member to the housing (112, 114, 118). A gaseous vibration damping medium (column 12, lines 20-21) is retained between the flexible member and the housing. The flexible member protrudes through the aperture (column 8, lines 20-31), and substantially none of the vibration damping medium is located in use between the clamping member and the housing (with the arrangement shown in figure 2, column 9, lines 25-35).

DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user.

8. With respect to claims 6 and 7, Wadge discloses a power tool having a housing (4) with a handle (10) and a motor to actuate an output member of the tool. The handle includes a gripping portion (area to be gripped by user). Wadge fails to disclose the chamber enclosing a gaseous vibration damping medium, as claimed.

9. DeLuca teaches a tool with a gripping portion where the gripping portion includes a chamber (106) enclosing a gaseous vibration damping medium (column 12, lines 20-21) extending outwardly from the gripping portion so that the gripping portion and the chamber may be simultaneously gripped. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user. DeLuca's

arrangement further includes a cover piece (230, 250, 256) made of a material that is relatively hard as compared to the gaseous vibration damping medium. Examiner notes that any material will be relatively hard compared to a gas. The cover piece includes an aperture (254) through which the chamber protrudes.

10. With respect to claims 9-11, Wadge discloses a power drill (shown in figure 4) comprising a main body (4), a handle (10) having opposite side surfaces (6, 8) each defining gripping regions. Wadge fails to disclose the two chambers as claimed.

11. DeLuca teaches two chambers (106) enclosing a gaseous vibration damping medium, one chamber protruding outwardly from the gripping region of each opposite side surface. The chambers are discrete from each other. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user. DeLuca also teaches four chambers.

12. With respect to claim 11, DeLuca discloses a single cover piece, but neither Wadge nor DeLuca show two cover pieces. However, replacing a single piece with multiple parts that act identical to the single piece is considered obvious and well known in the art. Such a change produces no new or unexpected result. It would have been obvious to one having ordinary skill in the art at the time of the invention to replace the single cover piece of DeLuca with a two cover pieces.

13. With respect to claims 12-14, Wadge discloses a power sander (column 5, line 1) comprising a housing with a main body (4) and upper gripping portion (on 10), a drive motor (22) in the main body, a sanding platen (sander attachment piece, not shown) extending downwardly from the main body and being driven by the drive motor. The handle (10) extends rearwardly from the main body. Wadge fails to disclose the chamber as claimed.

14. DeLuca teaches a tool with a gripping portion where the gripping portion includes a chamber (106) enclosing a gaseous vibration damping medium (column 12, lines 20-21). DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user. DeLuca also teaches four chambers. As a result of the combination, the chamber of DeLuca will protrude from an upper surface of the gripping portion of Wadge. DeLuca further shows two chambers enclosing the gaseous vibration damping medium.

15. With respect to claim 15, Wadge discloses a power saw (column 5, line 1, "jigsaw") comprising a main body (4) with an opening (18) therethrough to defines a handle (10) rearwardly of the opening, the housing adapted to receive a saw blade at a forward end. A motor (22) is disposed in the main body. The handle includes a gripping portion. Wadge fails to disclose the chamber as claimed.

16. DeLuca teaches a tool with a gripping portion where the gripping portion includes a chamber (106) enclosing a gaseous vibration damping medium (column 12, lines 20-21)

extending outwardly from the gripping portion so that the gripping portion and the chamber may be simultaneously gripped. DeLuca uses the arrangement to provide a cushioning effect for the user (abstract). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Wadge as taught by DeLuca, such that Wadge includes the chamber arrangement of DeLuca, in order to provide a cushioning effect for the user.

### ***Response to Arguments***

17. Applicant's arguments filed October 10, 2005, submitted with the Request for Continued Examination of November 14, 2005, have been fully considered but they are not persuasive.

18. With respect to claim 2, applicant argues that DeLuca fails to show any type of power tool having a motor and housing. Examiner notes that as currently presented, the claim does not claim the combination of a gripping portion and a power tool, rather the claim is drawn solely to the gripping portion. The limitations regarding the power tool are considered as intended use limitations.

19. Applicant argues that there is no motivation to combine Wadge and DeLuca, and that such a combination would be hindsight reconstruction. Examiner respectfully disagrees. Wadge explicitly discloses a power tool having a handle. Wadge fails to disclose any sort of cushioning device on the handle. DeLuca teaches a cushioning device that may be used on hand held devices, such as tools, for the purpose of providing a comfortable grip to the user. One having ordinary skill in the art would look to the teachings of DeLuca and combine them with Wadge, with the motivation of providing a comfortable grip to the user. With this motivation, the combination is not a result of hindsight reconstruction. While DeLuca discusses using the



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cushioning device with finger held articles, such as writing utensils, DeLuca also states that the device may be used with hand held articles (column 3, lines 19-20).

20. Applicant argues that the combination does not disclose a sander as claimed in claims 12 and 13. Examiner respectfully disagrees, and refers to column 5, line 1, of Wadge, where Wadge discloses “a sander”.

21. With respect to claim 15, applicant argues the combination of Wadge and DeLuca fails to disclose a power saw with a blade which includes a handle having a vibration dampening medium. Examiner respectfully disagrees. Wadge discloses the power tool as a “jigsaw” (column 5, line 1). DeLuca teaches the vibration dampening medium as discussed in the body of the rejection above.

### ***Conclusion***


22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**ROBERT J. SANDY**  
**PRIMARY EXAMINER**